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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0196-AGR-E TCEQ ID: RN103920385 CASE NO.: 32607**  
**RESPONDENT NAME: Nico Jaap de Boer**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Hilltop Jersey Farm No. 1, 19008 Farm-to-Market Road 3079, Chandler, Henderson County</p> <p><b>TYPE OF OPERATION:</b> Dairy operation</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received on November 29, 2006, by the Tyler Regional office, alleging that the dairy was pumping agricultural waste into a lake. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 1, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>     <b>TCEQ Attorney/SEP Coordinator:</b> None     <b>TCEQ Enforcement Coordinator:</b> Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468     <b>Respondent:</b> Mr. Nico Jaap de Boer, Owner, 19008 Farm-to-Market Road 3079, Chandler, Texas 75758     <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> November 29, 2006</p> <p><b>Date of Investigation Relating to this Case:</b> November 29, 2006</p> <p><b>Date of NOE Relating to this Case:</b> January 25, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation. Three violations were documented.</p> <p><b>WATER</b></p> <p>1) Failure to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation ("CAFO") through an individual water quality permit or a CAFO general permit. Specifically, during the investigation it was determined that the Facility meets the definition of a large CAFO due to the number of animals (at least 700 mature dairy cattle) [30 TEX. ADMIN. CODE § 321.33(d)].</p> <p>2) Failure to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures ("RCS") are in accordance with the technical standards developed by the Natural Resources Conservation Service. Specifically, the Respondent could not provide certifications for three of the RCSs at the Facility [30 TEX. ADMIN. CODE § 321.47(d)(3)].</p> <p>3) Failure to maintain the minimum well buffer distance requirements from control facilities. Specifically, the investigator observed a well located approximately ten feet from a lane leading from the freestall barns to the drip shed. Cattle were observed grazing within 15 feet of the well and the area immediately around the well was heavily stomped and devoid of vegetation [30 TEX. ADMIN. CODE § 321.38(b) and § 321.47(d)(6)].</p>	<p><b>Total Assessed:</b> \$7,000</p> <p><b>Total Deferred:</b> \$1,400  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$5,600</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on or before April 4, 2007, the Respondent has completed the following corrective measures at the Facility:</p> <p>a. Constructed a fence around the well to meet the minimum well buffer distance requirements; and</p> <p>b. Submitted to the TCEQ an application to obtain a concentrated animal feeding operation ("CAFO") general permit.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;</p> <p>b. Within 60 days after the effective date of this Agreed Order, obtain certifications from a licensed Texas professional engineer for each of the three RCSs at the Facility;</p> <p>c. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision b.;</p> <p>d. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a concentrated animal feeding operation has been obtained, that the number of mature dairy cattle has been reduced to less than 700, or that operation has ceased until appropriate authorization is obtained, as described in Ordering Provision e; and</p> <p>e. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision b. and d.</p>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

**DATES**

Assigned  
PCW

29-Jan-2007

4-Apr-2007

Screening

9-Feb-2007

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Nico Jaap de Boer

Reg. Ent. Ref. No. RN103920385

Facility/Site Region 5-Tyler

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 32607

Docket No. 2007-0196-AGR-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 3

Order Type 1660

Enf. Coordinator Lynley Doyen

EC's Team EnforcementTeam 1

Admin. Penalty \$ Limit Minimum \$0 Maximum \$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)**

Subtotal 1 \$7,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**

0% Enhancement

Subtotals 2, 3, & 7 \$0

Notes

No change in penalty amount recommended due to average performer classification.

**Culpability**

No

0% Enhancement

Subtotal 4 \$0

Notes

Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**

0% Reduction

Subtotal 5 \$0

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

0% Enhancement\*

Subtotal 6 \$0

Total EB Amounts \$1,369  
Approx. Cost of Compliance \$21,500

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7**

Final Subtotal \$7,000

## OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Adjustment \$0

Notes

Final Penalty Amount \$7,000

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$7,000

## DEFERRAL

20%

Reduction

Adjustment -\$1,400

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY**

\$5,600

Screening Date 9-Feb-2007

Docket No. 2007-0196-AGR-E

PCW

Respondent Nico Jaap de Boer

Policy Revision 2 (September 2002)

Case ID No. 32607

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN103920385

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No change in penalty amount recommended due to average performer classification.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

Screening Date 9-Feb-2007

Docket No. 2007-0196-AGR-E

PCW

Respondent Nico Jaap de Boer

Policy Revision 2 (September 2002)

Case ID No. 32607

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN103920385

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 321.33(d)

Violation Description

Failed to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a concentrated animal feeding operation ("CAFO") through an individual water quality permit or a CAFO general permit. Specifically, during the investigation it was determined that the Facility meets the definition of a large CAFO due to the number of animals (at least 700 mature dairy cattle).

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 3

72 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three monthly events are recommended based on the investigation date (November 29, 2006) through the date of screening (February 9, 2007).

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$985

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

# Economic Benefit Worksheet

Respondent Nico Jaap de Boer  
Case ID No. 32607  
Reg. Ent. Reference No. RN103920385  
Media Water Quality  
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$12,000	29-Nov-2006	31-Jan-2008	1.2	\$47	\$938	\$985
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a technically complete permit application. Associated expenses include application fee, site survey, and engineering certifications. Date Required is the investigation date. Final Date is the expected date that authorization will be obtained.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$12,000

TOTAL

\$985

Screening Date 9-Feb-2007

Docket No. 2007-0196-AGR-E

PCW

Respondent Nico Jaap de Boer

Policy Revision 2 (September 2002)

Case ID No. 32607

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN103920385

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 321.47(d)(3)

Violation Description

Failed to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures ("RCS") are in accordance with the technical standards developed by the Natural Resources Conservation Service. Specifically, the Respondent could not provide certifications for three of the RCSs at the Facility.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 3

72 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$3,000

Three single events (one event for each certification) are recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$263

Violation Final Penalty Total \$3,000

This violation Final Assessed Penalty (adjusted for limits) \$3,000

## Economic Benefit Worksheet

**Respondent** Nico Jaap de Boer  
**Case ID No.** 32607  
**Reg. Ent. Reference No.** RN103920385  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$4,500	29-Nov-2006	30-Sep-2007	0.8	\$13	\$251	\$263
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to contract a licensed Texas professional engineer to certify the design and construction of the RCSs. Date Required is the investigation date, Final Date is the expected date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,500

TOTAL

\$263



Screening Date 9-Feb-2007

Docket No. 2007-0196-AGR-E

PCW

Respondent Nico Jaap de Boer

Policy Revision 2 (September 2002)

Case ID No. 32607

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN103920385

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Violation Number 3

Rule Cite(s)

30 Tex. Admin. § 321.38(b) and § 321.47(d)(6)

Violation Description

Failed to maintain the minimum well buffer distance requirements from control facilities. Specifically, the investigator observed a well located approximately ten feet from a lane leading from the freestall barns to the drip shed. Cattle were observed grazing within 15 feet of the well and the area immediately around the well was heavily stomped and devoid of vegetation.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to maintain an adequate buffers could contaminate the well, resulting in human health or the environment being exposed to significant amounts of pollutants.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

72 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended based on the investigation date (November 29, 2006) through the date of screening (February 9, 2007).

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$121

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

## Economic Benefit Worksheet

**Respondent** Nico Jaap de Boer  
**Case ID No.** 32607  
**Reg. Ent. Reference No.** RN103920385  
**Media** Water Quality  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$5,000	29-Nov-2006	4-Apr-2007	0.3	\$6	\$115	\$121
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to ensure that the minimum well buffer requirement is met. Date Required is the Investigation date. Final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$121

# Compliance History

Customer/Respondent/Owner-Operator:	CN601180649	DE BOER, NICO JAAP	Classification: AVERAGE	Rating: 0.50
Regulated Entity:	RN103920385	HILLTOP JERSEY FARM NO 1	Classification: HIGH	Site Rating: 0.00
ID Number(s):	WASTEWATER AGRICULTURE NON-PERMITTED		ID NUMBER	R05AG0698
Location:	19008 FM 3079, HENDERSON CO, TX			Rating Date: September 01 06 Repeat Violator:NO
TCEQ Region:	REGION 05 – TYLER			
Date Compliance History Prepared:	February 08, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 08, 2002 to February 08, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Lynley Doyen	Phone: 512-239-1364			

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 09/09/2003 (248018)  
2 10/17/2005 (434290)  
3 03/09/2005 (349518)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
NICO JAAP DE BOER  
RN103920385**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0196-AGR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Nico Jaap de Boer ("Mr. de Boer") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. de Boer appear before the Commission and together stipulate that:

1. Mr. de Boer owns and operates a dairy operation located at 19008 Farm-to-Market Road 3079 in Henderson County, Texas (the "Facility").
2. Mr. de Boer has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and Mr. de Boer agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. de Boer is subject to the Commission's jurisdiction.
4. Mr. de Boer received notice of the violations alleged in Section II ("Allegations") on or about January 30, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. de Boer of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Dollars (\$7,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. de Boer has



paid Five Thousand Six Hundred Dollars (\$5,600) of the administrative penalty and One Thousand Four Hundred Dollars (\$1,400) is deferred contingent upon Mr. de Boer's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. de Boer fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. de Boer to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. de Boer have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on or before April 4, 2007, Mr. de Boer has completed the following corrective measures at the Facility:
  - a. Constructed a fence around the well to meet the minimum well buffer distance requirements; and
  - b. Submitted to the TCEQ an application to obtain a concentrated animal feeding operation ("CAFO") general permit.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. de Boer has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, Mr. de Boer is alleged to have:

1. Failed to obtain authorization to expand an existing animal feeding operation prior to meeting the definition of a CAFO through an individual water quality permit or a CAFO general permit, in violation of 30 TEX. ADMIN. CODE § 321.33(d), as documented during an investigation conducted on November 29, 2006. Specifically, during the investigation it was determined that the Facility meets the definition of a large CAFO due to the number of animals (at least 700 mature dairy cattle).
2. Failed to provide certification from a licensed Texas professional engineer that the design and construction of all retention control structures ("RCS") are in accordance with the technical standards developed by the Natural Resources Conservation Service, in violation of 30 TEX.





ADMIN. CODE § 321.47(d)(3), as documented during an investigation conducted on November 29, 2006. Specifically, Mr. de Boer could not provide certifications for three of the RCSs at the Facility.

3. Failed to maintain the minimum well buffer distance requirements from control facilities, in violation of 30 TEX. ADMIN. CODE § 321.38(b) and § 321.47(d)(6), as documented during an investigation conducted on November 29, 2006. Specifically, the investigator observed a well located approximately ten feet from a lane leading from the freestall barns to the drip shed. Cattle were observed grazing within 15 feet of the well and the area immediately around the well was devoid of vegetation and heavily stomped.

### **III. DENIALS**

Mr. de Boer generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Mr. de Boer pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. de Boer's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Nico Jaap de Boer, Docket No. 2007-0196-AGR-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that Mr. de Boer shall undertake the following technical requirements:
  - a. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;
  - b. Within 60 days after the effective date of this Agreed Order, obtain certifications from a licensed Texas professional engineer for each of the three RCSs at the Facility, in accordance with 30 TEX. ADMIN. CODE § 321.47(d)(3);
  - c. Within 75 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.b., as described in Ordering Provision No. 2.e. below;



- d. Within 180 days after the effective date of this Agreed Order, submit written certification that either authorization to operate a concentrated animal feeding operation has been obtained, that the number of mature dairy cattle has been reduced to less than 700, or that operation has ceased until appropriate authorization is obtained, as described in Ordering Provision No. 2.e. below; and
- e. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.b. and 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3756

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. de Boer. Mr. de Boer is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. de Boer fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. de Boer's failure to comply is not a violation of this Agreed Order. Mr. de Boer shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. de Boer shall notify the Executive Director within seven days after Mr. de Boer becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.



5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. de Boer shall be made in writing to the Executive Director. Extensions are not effective until Mr. de Boer receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. de Boer in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. de Boer, or three days after the date on which the Commission mails notice of the Order to Mr. de Boer, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

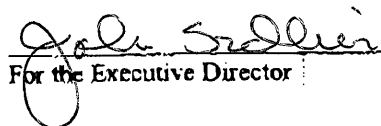


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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director


9/17/07  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me, and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

8-15-07  
Date

<sup>Jaap</sup>  
Nico de Boer  
Name (Printed or typed)  
Authorized Representative of  
Nico Jaap de Boer

owner/operator  
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

